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UNCLAS SECTION 01 OF 02 HONG KONG 000372

SENSITIVE
SIPDIS

STATE FOR EEB/IPE/TMCGOWAN, JURBAN
STATE FOR EAP/CM
DEPT PASS USTR FOR LEE, RAGLAND
DEPT PASS USPTO FOR BROWNING
BEIJING FOR COHEN/GUANGZHOU FOR WONG

E.O. 12958: N/A
TAGS: [KIPR](#) [ECON](#) [EIND](#) [EFIN](#) [EINV](#) [ETRD](#) [HK](#)
SUBJECT: 2009 SPECIAL 301 RECOMMENDATION FOR MACAU

REF: A. STATE 8410
[1](#)B. HONG KONG 270

Summary and Recommendation for Macau

[1](#)1. (SBU) Summary: Post recommends that Macau be excluded from the 2009 Special 301 list. The government of Macau (GOM) maintained its generally successful IPR protection, education and enforcement efforts during 2008. Post remains concerned, however, about flagrant and extensive cable TV signal piracy in Macau's residential market, and the GOM's inability to resolve this issue. While Macau's outdated copyright law makes it difficult for law enforcement to act against software piracy and control digital/internet IPR infringement, Macau Customs' enforcement activities deterred smugglers of counterfeit goods and reduced the retail availability of IPR-infringing products to low levels. End Summary.

Cable TV Signal Piracy

[1](#)2. (SBU) The most significant intellectual property issue in Macau is the theft of cable TV signals. Industry observers estimate over 80 percent of the Macau residential market is controlled by local "antenna companies" offering pirated programming. Antenna companies began as community antenna television (CATV) providers, but began reselling satellite TV programming signals in 2000. These fifteen companies have illegally connected approximately 125,000 of Macau's 150,000 households to as many as seventy different TV channels from the United States, Mainland China and Taiwan (ref B). The antenna companies pay no licensing fees for their programming, and charge only three or four USD per month per household, compared with monthly charges of twenty-four USD per household by the only GOM-licensed provider of cable television subscriptions, Macau Cable TV.

Ongoing Battle With Signal Pirates

[1](#)3. (SBU) Previous GOM efforts to force the antenna companies to stop offering illicit programming failed. Early in 2008, the GOM Bureau of Telecommunications Regulation (known locally by its Portuguese acronym "DSRT") severed newly installed fiber optic cables owned by an antenna company. The antenna company responded with a service blackout that angered its residential customers. The blackout fizzled and was lifted by the antenna company only when affected residents began turning to Macau Cable TV for service. Macau Cable TV initiated several civil lawsuits against antenna companies, in an effort to force them to cease and desist

from supplying pirated signals to Macau residents. Two of these lawsuits remain undecided in the courts, but industry observers expect the lawsuits to have little effect on the antenna companies' operations or their dominant residential market share.

¶4. (SBU) U.S. investment in Macau changed the competitive landscape for cable television. The new world-class resorts and casinos opening in Macau purchased legitimate cable television services, enabling Macau Cable TV to monopolize the hotel market. With the assistance of DSRT hotel inspections in 2007 and 2008, Macau Cable TV controlled almost 100 percent of Macau's hotel market by the end of ¶2008.

¶5. (SBU) Macau Customs officials acknowledge the signal piracy problem and note that Customs has presented evidence against illegal antenna operators to the public prosecutor. The court has yet to launch any civil proceedings. Without new laws specifically addressing digital piracy, industry believes successful prosecutions of signal piracy will remain difficult. Given the GOM's inability or unwillingness to significantly impair the antenna companies' operations, many industry observers believe one or more foreign producers of copyrighted content must file lawsuits in Macau to force the antenna companies out of business - or at least disable their ability to sell pirated signals to Macau's households. To date, no provider of copyrighted content (e.g. British Premier League, HBO, ESPN) has initiated such a lawsuit in Macau against an antenna company.

Legal Ambiguity Allows Software Piracy

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¶6. (SBU) The GOM has not taken action to address software piracy complaints. Macau's statutory framework governing copyrights has not been revised since 1999, and has not yet been tested in a single software piracy case. Industry representatives complain that ambiguous legal provisions make it difficult for law enforcement authorities to file criminal charges against allegedly high levels of infringement. (Statistics on business software piracy and IPR infringement in the digital realm are unavailable.) Post is aware of no current GOM efforts to modernize Macau's statutory framework that governs IPR protection.

Enforcement and Education

¶7. (SBU) Total Seizures: The overall number of counterfeit and pirated items seized by Macau Customs at its borders in 2008 declined from 2007. In 2008, Macau Customs seized 1,148 counterfeit items of various types, a decline of 85 percent from 2007. The vast majority of these goods originated in mainland China. Industry observers believe Macau Customs' enforcement efforts - including more intense inspections at border checkpoints, systematic spot checks at retailers, and improved exchanges of information with law enforcement entities in Hong Kong and Mainland China - effectively dissuade most smugglers from attempts to cross Macau's borders with counterfeit goods.

¶8. (SBU) Optical Disks seizures: A total of 113 pirated optical disks were seized in 2008, a decline of 99 percent compared with 2007. The 2007 seizure total was substantially higher than recent historical figures, due to two unusually large transshipment seizures of optical disks moving from mainland China to Taiwan. In 2008, Macau's courts handed down twelve copyright and trademark convictions. All twelve individuals were fined up to US\$ 1,875 (MOP 15,000), with four of them receiving suspended jail sentences. Macau needs to mete out stronger punishments to deter possible future increases in the smuggling and sale of counterfeit items.

¶9. (SBU) Over the past several years, Macau Customs raided many illicit optical disc factories and closed down dozens of retailers selling counterfeit goods. Only one legal optical disk factory remains, and that operation receives regular visits from Macau Customs. The GOM has been proactive in combating counterfeit drugs, resulting in lower rates of pharmaceutical piracy in Macau than in some of its neighbors.

¶10. (SBU) To combat the influx of counterfeit goods crossing the border, the GOM has been trying to decrease consumer demand for fake products among local residents and visitors through public education campaigns. As part of the GOM's licensing program for tour guides, all guides must undergo IPR awareness training and are urged to direct their clients to legitimate retailers. Macau Customs and DSRT also conduct educational campaigns on the importance of protecting intellectual property rights, including campaigns to deter cable signal piracy. With regard to signal piracy, these campaigns have had little effect.

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